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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Patagonia Area Resource Alliance, et al.,

No. CV-23-00280-TUC-JGZ

10 Plaintiffs,

ORDER

11 v.

12 United States Forest Service, et al.,

13 Defendants.
14

15 Before the Court is Plaintiffs' Motion for Injunction Pending Appeal and Expedited
16 Ruling. (Doc. 51.) Pursuant to Federal Rule of Civil Procedure 62(d), Plaintiffs request
17 that the Court grant an injunction pending appeal to prohibit implementation of the U.S.
18 Forest Service's approval decisions for the Sunnyside Project and Flux Canyon Project
19 until resolution of Plaintiffs' appeal of this Court's Order denying their motion for
20 preliminary injunction (Doc. 48). Plaintiffs request an expedited ruling as ground-
21 disturbing development activities to implement the challenged project decisions may
22 commence as of September 15, 2023. (Doc. 51 at 5.) The Federal Defendants and
23 Intervenor South 32 and Arizona Standard LLC oppose the motion. (Docs. 53, 54, 55.)
24 For the following reasons, the Court will deny the motion for injunction pending appeal.

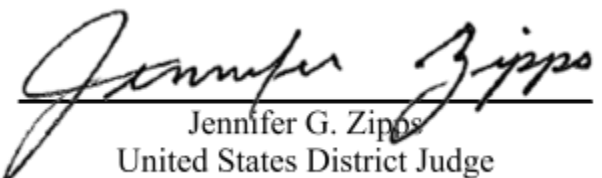
25 In deciding whether to grant a stay, "a court considers four factors: (1) whether the
26 stay applicant has made a strong showing that he is likely to succeed on the merits; (2)
27 whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the
28 stay will substantially injure the other parties interested in the proceeding; and (4) where

1 the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426 (2009) (cleaned up). “The first
2 two factors are the most critical; the last two are reached only once an applicant satisfies
3 the first two factors.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (cleaned
4 up). Under the Ninth Circuit’s sliding scale approach to preliminary injunctions, “the
5 elements of the preliminary injunction test are balanced, so that a stronger showing of one
6 element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*,
7 632 F.3d 1127, 1131 (9th Cir. 2011).

8 Plaintiffs request a stay “for the reasons stated in Plaintiffs’ briefing in support of
9 their motion for a preliminary injunction.” (Doc. 51 at 3.) The Court is aware that its
10 denial of a motion for injunction does not foreclose its authority to stay operations while
11 the appeals court considers Plaintiffs’ claims. *See Sanai v. Kruger*, No. 23-cv-01057-
12 AMO, 2023 WL 5496802, at *2 (N.D. Cal. Aug. 24, 2023). Yet here, the Court concludes,
13 as the Court in *Sanai* did, that Plaintiffs fail to make the strong showing required for
14 issuance of an injunction pending appeal. The Court can neither conclude that Plaintiffs
15 are likely to succeed on the merits nor that they will be irreparably injured absent a stay.
16 The Court addressed Plaintiffs’ same arguments in the order denying the motion for
17 preliminary injunction. (See Doc. 48.) Plaintiffs present no additional arguments in
18 support of their motion for injunction pending appeal, nor highlight any facts or law that
19 the Court overlooked. Thus, the Court finds no basis to grant the motion.

20 Accordingly, **IT IS ORDERED** that Plaintiffs’ Motion for Injunction Pending
21 Appeal and Expedited Ruling (Doc. 51) is DENIED.

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23 Dated this 13th day of September, 2023.

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27 Jennifer G. Zippo
28 United States District Judge